

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.973 of 2005
Date of Decision: July 31, 2007

Bhim Singh

.....Appellant

Versus

Karan Singh and another

....Respondents

Before: Hon'ble Mr. Justice R.S. Madan

Present: Mr. Sandeep Kotla, Advocate for the appellant.
Mr. S.R. Hooda, Advocate for the respondents.

R.S. Madan (J)

1. This Regular Second Appeal is directed against the judgment and decree dated 16.02.2005 rendered by the learned District Judge, Sonapat, whereby he accepted the appeal of the plaintiff and passed a decree for permanent injunction, restraining the defendant from dispossessing the plaintiffs from the suit property and also restraining the defendant from raising construction over the suit property without partition or without the written permission of the plaintiff/appellants.

2. That the respondents/plaintiffs have instituted a suit against the appellant seeking a decree for partition with regard to suit land. It was prayed therein that a decree for permanent injunction restraining defendant from dispossessing the plaintiffs from their half portion of suit property and from raising construction thereon without getting the same legally partitioned, with a further prayer of injunction restraining defendant from alienating any portion of the suit property in any way till the disposal of the suit.

3. The facts of the case can be recapitulated in narrow compass

as under:-

4. One Jai Lal grandfather of the plaintiff and father of the defendant was owner in possession of plots No.235, 235-A, 235-B and 235-C situated within the Laldora and within the abadi deh of village Rohat (Sonapat). In the aforesaid plots there was an old Kotha in a dilapidated condition constructed by said Jai Lal which is now being used as guest house. It is the case of the plaintiff that the defendants were strong and hot-headed person and used to harass the father of the plaintiff in his young age and consequently Giani Ram, father of the plaintiff left the village due to fear to his life and has not turned back nor has been heard by anyone till date. His whereabouts are not known. Because of his long absence from the village and being unheard by the relatives, he was presumed to be dead. It was thereafter that both the plaintiffs came in the shoes of their father Giani Ram with the extent of half share i.e. equal to the share of the defendant as the suit property was left by said Jai Lal, father of the defendant and grandfather of the plaintiffs.

5. The defendant has threatened to dispossess the plaintiffs from their half portion of plots mentioned above in para 4 of the judgment and is also bent upon to alienate the same. Therefore, the suit was filed against the defendant/appellant. Defendant/appellant appeared, contested the suit, filed his written statement and denied all the allegations incorporated in the plaint. It was pleaded that plaintiffs are neither the owners nor in possession of half share of the suit property and proper court fee has also not been paid by them, so the suit of the plaintiffs is liable to be dismissed.

6. Replication was filed denying the averment made in the written statement and reasserted their own claim as set up in the plaint.

7. The parties, however, went on trial on the following issues :-

1. Whether plaintiffs are in possession as co-sharers over the suit property and are entitled to the relief of injunction against defendant? OPP

2. Whether plaintiffs are entitled to a decree for partition? OPP

3. Whether plaintiffs have no cause of action to file the present suit? OPD

4. Whether plaintiffs have not affixed proper court fee? OPD

5. Relief.

8. Both the parties led evidence in support of their claims raised in the pleadings.

9. On the analysis of the evidence led by the parties the learned Civil Judge, (Sr. Division), Sonapat, dismissed the suit of the plaintiffs.

10. Aggrieved by the impugned judgment and decree of the Civil Judge (Sr. Division), Sonapat, the plaintiff filed an appeal before the learned District Judge, Sonapat, who after evaluating the evidence led by the parties, accepted the plea and decreed the suit of the plaintiffs, restraining defendant from dispossessing the plaintiffs from the suit property as well as restraining defendant from raising construction over the suit property without partition or without the written permission of the plaintiffs/respondents.

11. Against the impugned judgment and decree of the First Appellate Court, the defendant/appellant has filed the present Regular Second Appeal No.973 of 2005 before this Court.

12. Heard.

13. The only contention raised by the defendant/appellant before this Court is that Giani Ram, who was predecessor in interest of the property is missing for the last 38 years. But no suit for declaration was filed by either party so as to presume his civil death. Thus, in the absence of any suit for declaration the learned District Judge, Sonapat, has erred in presuming the death of Giani Ram.

14. This contention of the counsel has no force for the reasons

that Giani Ram was not heard for about 38 years and has not turned back to his village. His whereabouts are not known to any of his relatives and his long absence of 38 years from the village as well as being unheard for such a long time, the Court has rightly presumed him dead. It was on account of his absence for such a long span of 38 years that the dispute arose between the parties with respect to the suit land. It is an admitted fact that both the parties have half share each in the four plots mentioned in the plaint. The plaintiffs/respondents are seeking partition of their half share in the suit property. The defendant/appellant could not lead any evidence on the record so as to show that he is the exclusive owner of the four plots mentioned above.

15. The decision taken by the District Judge, Sonapat is purely based on facts and evidence brought on the record and no substantial question of law is involved in the appeal.

16. In view of the observation made by the Hon'ble Supreme Court in **Gurdev Kaur and other versus Kaki and other, reported as 2007 (1) SCC 546**, this Court cannot become a third court for evaluating the evidence led by the parties.

In the result, I find no merit in this regular second appeal and the same is dismissed.

(R.S. Madan)
Judge

July 31, 2007
sk